

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

1. Meera Devi Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITIOIN NO.1121/2006

2. Syopat Ram Vs. State of Rajasthan & Anr.

S.B.CR. REVISION PETITION NO.1039/2006

DATE OF ORDER :: July 10, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.R.S.Gill, for petitioner Meera Devi, in SBCR.Misc.Pet.No.1121/2006 and for respondent No.2 Smt. Radha in S.B.Cr.Revision Pet. No.1039/2006.
Mr.R.K.Bohra for petitioner Syopat in SBCr.Rev.Pet. No.1039/2006 and respondent No.2 in S.B.Cr.Misc. Petition No.1121/2006.
Mr.Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

The criminal misc. petition No.1121/2006 and criminal revision petition No.1039/2006 involve common question of law and between the same parties arising out of the very impugned order dt. 8.8.2006 passed by Sessions Judge, Hanumangarh (for short 'the revisional court' hereinafter) and, therefore, with the consent of the learned counsel for the parties, they are heard together and being decided.

Facts giving rise to both the petitions are that on a report lodged by Sheopat Ram at Police Station, Hanumangarh Town being FIR No.2 dt. 2.1.2005, police registered a crime report for the offences under sections 447, 379 504 I.P.C. Police ensued the investigation and after investigation, the police filed the challan against three persons namely Chandu Ram, Krishna Lal and Bhup Singh, however, no challan has been filed against petitioner Meera Devi in S.B.Cr.Misc. Petition No.1121/2006 and respondent No.2 Smt. Radha in S.B.Cr.Revision Petition No.1039/2006.

After recording the statements of the prosecution witnesses, complainant Sheopat Singh filed an application under section 319 Cr.P.C. before the Additional Chief Judicial Magistrate, Hanumangarh (for short 'the trial court' hereinafter). By order dt. 8.2.2006, the trial court partly allowed the

application and took the cognizance against petitioner Meera Devi in S.B.Cr.Misc. Petition No.1121/2006 and respondent No.2 Smt. Radha in revision petition No.1039/2006. Both of them have challenged the order before the revisional court by way of revision petition being Revision Petition No.98/2006. The revisional court partly allowed the revision petition and set aside the order taking cognizance against Smt. Radha, non-petitioner No.2 in S.B.Cr.Revision Petition No.1039/2006, however, maintained the order against petitioner Meera Devi. Hence, petitioner Meera Devi as also the complainant Sheopat Singh have filed the instant criminal miscellaneous petition and the revision petition respectively.

I have heard learned counsel for the parties.

It is contended by the learned counsel for the petitioner Meera Devi that in the first information report lodged by complainant Sheopat Singh, there is no overt act assigned to petitioner Meera Devi in S.B.Cr.Misc. Petition No.1121/2006 as also non-petitioner No.2 Smt. Radha in S.B.Cr.Revision Petition No.1039/2006 and, therefore, the police rightly investigated the matter and filed the challan against three persons. In the first information report, though the presence of petitioner Meera Devi and Smt. Radha has been shown but no specific overt act has

been assigned to them, even there is no extra judicial confession with regard to the theft of tree. The allegation of causing injuries by fists is against Chandu Ram, Krishna Lal and Bhup Singh, even the allegation of trespassing the land is against these three persons. So far as alleged extra judicial confession regarding taking away the "Khejri" tree is concerned, this also against these three persons as one of the accused said that he along with other two persons took away the "Khejri" tree.

In view of the first information report and the statement of the complainant Sheopat Singh recorded under section 161 Cr.P.C., the police did not find the case against Meera Devi and Smt. Radha, however, these persons were examined by the trial court and during trial of the case, they alleged that Meera Devi and Smt. Radha abused the complainant party as also were the party in taking away the "Khejri" tree.

Learned counsel for the complainant has relied on a decision of this Court in Bega Ram vs. State of Rajasthan & Anr., 2006 (5) RDD 2807 (Raj.), wherein this Court held that when there is specific evidence showing the specific role, the overt act of the non-petitioner No.2 therein in a murder case, simply because the injured witnesses are from the same family, it cannot be a ground to disbelieve the case of the prosecution at

that stage.

In *Krishnappa vs. State of Karnataka*, 2004 (6) Supreme 432, the Hon'ble Supreme Court held that it has been repeatedly held that the power to summon an accused is an extraordinary power conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken.

In the instant case, in view of the material available on record, there is no compelling reason to presume that Meera Devi and Smt. Radha committed the offence. In this view of the matter, the trial court fell in error in taking cognizance aiding these two persons not being accused in this case and taking cognizance so also the revisional court in maintaining the order of the trial court so far as petitioner Meera Devi in S.B.Cr.Misc. Petition No.1121/2006 is concerned.

In this view of the matter, the criminal miscellaneous petition No.1121/2006 is allowed. Order passed by the trial court as also by the revisional court are set aside. S.B.Cr. Revision Petition No.1039/2006 is devoid of merit and the same is, therefore, dismissed.

[H.R.PANWAR],J.

m.asif/-